IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1001 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMTHABHAI JESINGBHAI PATNI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1001 of 1995
MR G RAMAKRISHNAN for Petitioner No. 1
MR A.J. DESAI, LD. APP for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.C.PATEL

Date of decision: 14/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. In this appeal under section 374(2) of the Code of Criminal Procedure, the appellant-convict (original Accused No.1) has challenged the conviction recorded for offence under section 302 I.P.C. and sentenced to suffer life imprisonment and fine of Rs.500/-; in default R.I. for six months by Learned Addl. Sessions Judge, Ahmedabad City. By the impugned judgment the trial court acquitted original accused No. 2,3 and 4.

2. Facts leading to the filing of the present appeal shortly stated are; that the convict Amthabhai Jesingbhai Patni was married with deceased Shantaben. From their wedlock four daughters and three sons were born to convict and deceased Shantaben. On account of discord, Shantaben along with her three daughters was staying separately, whereas the convict was staying with his three sons; that deceased Shantaben was carrying on the business of selling kerosene as a licensed dealer at a place near one fair price shop situated at Bapalal Ganchi's Chawl in Chamanpura area in the city of Ahmedabad; that on 30-11-1993 deceased Shantaben along with her daughters Manju and Sushila had gone to the place of their business near Bapalal Ganchi's Chawl in Chamanpura area. They had reached at the said place around 10.00 a.m., at that time accused No.1 came from the opposite direction with gupti in his hand. His three sons, namely Shailesh, Jayanti and Rajesh were also with him. Amthabhai in a filthy language gave abuses to Shantaben. As per the prosecution case accused No. 2, 3 & 4 i.e. three sons surrounded Shantaben and caught hold of her, whereas accused No.1 dealt knife blows on the person of Shantaben; that one gupti blow was dealt on right buttock and the second blow was dealt on upper portion of right thigh. Seeing Amthalal inflicting knife blows daughters were frightened and ran away. Thereafter accused No.2, 3 and 4 removed Shantaben to Civil Hospital where she was admitted in emergency ward. The prosecution case further is that, another daughter Veenaben and eldest daughter Shardaben reached Civil Hospital and in the hospital they also came to know that accused No.2 , 3 and 4 had told the doctor in the hospital that deceased due to giddiness had fallen down and had sustained injuries due to striking with an iron sheet; that Shantaben succumbed to her injuries at about 12.30 p.m. The prosecution case is that because of the rivalry between the accused and deceased Shantaben, the accused persons shared common intention of committing murder of deceased Shantaben.

Sushilaben, one of the daughters, who had also accompanied the deceased at the place of incident, lodged complaint exh.16 against the accused persons, i.e. father and three brothers alleging offence under section 302 r/w 34 of I.P. Code came to be registered against the accused persons. The investigation was carried out. On completion of the investigation chargesheet came to be filed against all the accused persons for the aforesaid offences. The trial court framed charge vide exhibit-2 against the accused persons for the aforesaid offence. All the accused persons denied the charge levelled against them and claimed to be tried. The prosecution in order to bring home the guilt to the accused persons adduced oral as well as documentary evidence; that the trial Court also recorded statements under section 313 Cr.P.C. of the accused persons. The defence is that of denial. Learned trial Judge appreciating the oral as well as documentary evidence and considering the statements under section 313 Cr.P.C. found accused No.1 Amthalal Jesingbhai Patni guilty for the offence under section 302 I.P. Code and sentenced him to suffer imprisonment for life and imposed fine of Rs.500/-; in default R.I. for six months. This conviction and sentence by the trial court have been assailed in the present appeal by the appellant-original accused No.1. Learned trial Judge appreciating the evidence acquitted accused No.2, 3 and 4 of the charges levelled against them.

3. It is submitted by Mr. G. Ramakrishnan, learned advocate for the appellant-convict that the injuries suggested from the postmortem note exh. 18 is not on the vital part of the body, and that, the injuries inflicted are on buttock and thigh and that there was no intention to kill deceased Shantaben; that the injury was only to scare Shantaben so that she may come to terms; that the weapon in the incident is not established; that the act can at the most be said to be out of proportion and control, and therefore, the conviction under section 302 I.P. Code cannot be sustained. It is further submitted that the age and health of the convict be also considered.

4. It is submitted by Mr. A.J. Desai, learned APP that the relations between the convict and the deceased were not cordial since long before the incident; that three complaints were filed by the deceased against the convict for various offences; that the convict and deceased Shantaben had separated in company long back and deceased was staying with her daughters, whereas the

convict was staying with three sons separately; that PW-1 complainant Sushilaben has given the complete account of the incident implicating the convict and she is an eye witness to the incident; that PW-4 Manjulaben another daughter is also an eye witness to the occurrence and she has also in categorical terms stated that the convict dealt gupti blows on the person of the deceased which proved fatal and the victim died within 2 1/2 hours of the incident which would suggest the gravity of the offence. It is further submitted that the medical evidence, namely evidence of PW-2 the doctor who performed the postmortem examination and also prepared postmortem note vide exh. 18 lends corroboration to the prosecution version.

5. We have also reappreciated the evidence adduced before the trial court.

6. There is no much dispute about deceased Shantaben having died a homicidal death. The evidence of PW-2 Dr. Vinayakrao Vasudevrao Patil suggests that on 30-11-1993 at about 4.30 p.m. dead body of one female Shantaben Amthalal Patni was brought to her for postmortem examination in the Civil Hospital; that the witness performed postmortem examination on the dead body and noticed external injuries in the nature of two stab wounds on right thigh. The other external injuries noted are abrasions on margins and angles of both the above stab wounds i.e. external injuries were acute. It is further suggested that all the injuries were ante mortem and capable of causing death in the ordinary course of nature and both the stab wounds entered in the muscles of right thigh and had cut all the tissues sharply. It is further suggested that the injuries noted in the postmortem note exh. 18 were possible by gupti muddamal article shown to the witness. This witness has denied the suggestion that the external injury No.1 & 2 were possible if a person falls down due to giddiness and striking with iron sheet. Thus the witness has categorically stated that injury No 1 & 2 could be caused by muddamal gupti and they could not be caused by striking with iron sheet. The external as well as internal injuries are noted in exh. 18 and the cause of death as suggested by PW-1 and postmortem note exh. 18 is hemorrhage because of shock as a result of injuries sustained. Thus it is sufficiently established that deceased Shantaben died a homicidal death because of the injuries sustained by her.

7. The evidence on record suggests that convict was a quarrelsome person and he was ill-treating his wife

deceased Shantaben and often subjected her to beating; that deceased Shantaben along with her three daughters Shardaben, Manjulaben and Sushilaben had separated in company from her husband and was earlier staying at Chandkheda Jantanagar. It is also suggested from evidence that on 22-4-1993 deceased Shantaben had lodged a complaint exh. 32 against all the accused persons alleging that her two daughters were beaten by the convict; that on 5-5-1993 complaint exh. 33 came to be filed by the deceased against accused No. 1, 2 and 4. Yet another complaint exh. 31 came to be filed against accused No. 1 and 2 by Shantaben. The evidence suggest that accused persons were harassing the deceased and her daughters which led to filing of complaints exh. 31, 32 and 33 respectively. Thus the relations between the convict Amthalal and deceased Shantaben had worsened to the extent of filing complaints by the deceased.

8. The evidence of PW-1 Sushilaben - the complainant suggests that deceased Shantaben was carrying on the business of kerosene - must be for their livelihood; that she used to assist her mother Shantaben by preparing bills in the kerosene business. The evidence further suggest that because of the ill-treatment meted out to her mother, Shantaben along with the witness and other sisters had gone to stay in the premises at Chandkheda-Jantanagar; that there also the convict had come and quarrelled with the deceased; that the house was given to one of the sons Shaileshbhai (accused No.2) and deceased Shantaben along with her daughters came to stay in Ramchandra Colony. Regarding the incident of 30-11-1993 it has been suggested from the evidence of PW-1 and PW-4 that at about 10.00 O' clock both the witnesses had come along with their mother Shantaben to the place of incident in connection with kerosene business near Bapalal Ganchi's Chawl; that convict came from the opposite direction i.e. came from the direction of Amrutlal Kesavlal's Chawl carrying gupti in his hand. Convict atonce started abusing deceased Shantaben in filthy language and inflicted one gupti blow on the right buttock and another blow was dealt on the right thigh; that seeing the incident the witnesses became frightened and fled away. Nothing substantial has been brought out by the defence from the cross examination of PW-1 & 4 who are the eye witnesses to the occurrence. It is suggested that in the Civil Hospital PW-1 lodged complaint against the accused persons. The witnesses denied the suggestion that because of giddiness Shantaben fell down and had sustained injuries due to striking with an iron sheet. As far as the evidence of PW-1 & 4 relating to the occurrence implicating convict, we see no reason to

disbelieve their testimony since they have given truthful account of the incident wherein convict is stated to have dealt forceful blows with gupti on the person of deceased Shantaben.

Thus, it would be seen that the say of PW-1 & 4 as regards gupti blows having been dealt by convict on the right buttock and right thigh of Shantaben has been corroborated by the medical evidence, namely testimony of PW-1 and postmortem note exh. 18.

9. Exhibit-29 is the panchnama relating to the discovery of muddamal weapon, i.e. gupti at the instance of accused No.1. The discovery panchanama is proved through the evidence of PW-6, one of the panch witness to the discovery panchnama exh. 29. This witness has supported the prosecution and has deposed that the accused expressed willingness to point out the weapon and a preliminary panchnama to that effect was drawn in the police station. Thereafter the accused led the panchas and the police staff to the place where the weapon was concealed; that the panch and the police staff were taken to a place below Chamunda Bridge and there from an isolated place gupti was taken out by accused No.1 and the same was recovered. Recovery panchnama was drawn to that effect in presence of panch witness and the weapon was recovered by pasting slip containing signatures of the panch witnesses on the weapon. Nothing substantial has been brought out from the cross examination of this witness so as not to believe the evidence of PW-6. The evidence of PW-2 suggests that blouse, petty coat, sari were on the dead body when the same was brought for postmortem examination. Panchnama exh. 21 suggests recovery of clothes of the deceased and also bed sheet. Exhibit-22 is the letter forwarding muddamal articles, addressed to the Forensic Science Laboratory (FSL) for analysis and report. Perusal of page 173, exh.24 suggests, article B bedsheet, B-1 sari, B-2 petty coat, B-3 blouse and B-4 blouse. The bed sheet and the clothes of the deceased contained human blood of 'B' group. Even the sample of earth taken from the place of incident also suggests containing human blood of 'B' group. It is suggested that the muddamal gupti contained human blood but the group could not be ascertained. The medical evidence and the FSL report lends corroboration to the testimony of PW-1 and 4.

10. The evidence on record discloses that the appellant-convict at the time of incident was carrying gupti in his hand and seeing Shantaben he started giving abuses in filthy language and immediately started

inflicting gupti blows. It may also be appreciated that Shantaben had come in connection with her kerosene business. As per evidence of PW-4, as the quota of kerosene was over Shantaben had come to the rationing shop near the place of incident. The appellant convict taking advantage of Shantaben coming to his place in connection with her business of kerosene, no sooner he saw Shantaben, started giving abuses followed by gupti blows. It may also be seen that as per the evidence appellant convict had come with gupti in his hand. All these, in our opinion would go to show that, convict had come to the place of incident knowing full well that Shantaben would also be there in connection with her kerosene business, with an intention to cause such injury to Shantaben which may result into her death. Thus inflicting gupti blows can very well be said to be an act with an intention and knowledge to cause death of Shantaben. It may also be seen that the injuries were inflicted at 10.00 a.m. and Shantaben succumbed to her injuries at 12.30 p.m. within a span of 2 1/2 hours. Therefore, we are unable to accept the arguments advanced by Mr. G. Ramakrishnan, learned advocate for the appellant convict that the injuries inflicted are not with an intention and/or knowledge to commit murder of Shantaben.

11. Thus it would be seen from the above that the prosecution has been able to establish the participation of appellant convict in the incident of 30-11-1993 wherein deceased Shantaben received fatal injury at the hands of the appellant convict. This would suggest that the offence committed by the appellant convict squarely falls within the ambit of Section 302 I.P. Code. We, therefore, do not find any infirmity in the impugned judgment holding appellant convict guilty for the offence under section 302 I.P. Code and imposing sentence of imprisonment for life, and a fine of Rs.500/-; in default rigorous imprisonment for six months, so as to call for any interference in this appeal. The appeal, therefore, being devoid of merit would be liable to be dismissed.

12. In the result, the appeal fails. The conviction recorded and the sentence imposed by the trial Court against the appellant-convict Amthabhai Jesingbhai Patni are confirmed.

Dt: 14-8-2003 (N.G. Nandi, J)

(M.C. Patel, J)

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